



## MISCELLANEOUS SPECIAL PROVISIONS Overview of Pertinent Case Law

Applicable findings for each case are summarized below. Some of the cases contain important points of law that do not apply to questions of access, and those points are not discussed here.

All quotations are from the respective judge's opinions. This toolbox also contains the entirety of these opinions.

### **IBLA 91-48**

**Note:** This case is also found in the Inholdings Toolbox. It is included here for the IBLA's finding that the federal agency can attach stipulations to a right-of-way that honors the right but at the same time protects wilderness values.

**Background:** Williams and Brown held a parcel of private land inside the Big Butte addition to the Yolla Bolly – Middle Eel Wilderness. The BLM offered a lease on the existing road accessing their property which “contained major restrictions on the use and enjoyment of the roads,” including prohibiting traffic “during periods of ‘wet road conditions,’ i.e., when tires would leave ruts in excess of 1-1/2 inches.” Williams and Brown argued the lease was improper as they had used the road prior to the enactment of the Wilderness Act; the use restrictions were discriminatory; and, in any event, the rental fee assessed was too high.

**Finding:** “When Congress...guaranteed the right of reasonable access to owners of private inholdings, it did not mandate that the access was to be unrestricted...If BLM grants reasonable access to private inholdings, it is entitled to limit that access to preserve the wilderness character of the land.”

**Finding:** “Williams and Brown object to the lease, but there is nothing in section 5(a) of the Wilderness Act or section 1323(b) of ANILCA that either precludes BLM from granting access through the use of a lease or requires the use of some other mechanism, such as a special-use permit.”

**Finding:** The restrictive terms of the lease were upheld, but “the appraisal [setting the rental fee for the lease] should have considered the reduced value of the right-of-way resulting from the imposition of these stringent restrictions.”

### **High Sierra Hikers Assn. v. USFS**

**Note:** This case primarily concerned whether the dams in question should be managed either as part of the wilderness's historical value or for their impact to aquatic species of concern. Those points are not discussed here. It is included here for the very narrow portion of the case dealing with the Court's opinion on whether the federal jurisdiction is subordinate to the State's “sovereign interest” in the water.

**Background:** Several water control structures were built starting in the 1920's to develop fishery projects that had started 30 years earlier when natural, fishless lakes were planted with fish by local cattlemen. In addition, the dams were to “provide downstream benefits to fish habitat, food production, and power production.” In the 1950's a major dam outside the Emigrant diminished the downstream importance of the Emigrant dams. The area

became part of the Emigrant Wilderness in 1975 (which was enlarged by a second act in 1984); since the late 1980's the dams were operated primarily by the California Department of Fish and Game. Unmaintained, the dams had not been used to manipulate the streamflow since the 1990's. The Forest Service decided to maintain 11 of the 18 dams: 7 were deemed eligible for the National Register; 4 improved reproduction of the fishery, supporting the reduction or elimination of fish stocking; all 11 "are a highly valued cultural connection in the local history" and their refurbishing would be consistent with the MOU between the USFS and CDFG. High Sierra Hikers disagreed, calling the dams "non-conforming" structures not mentioned in either Emigrant Wilderness act. Various interveners on behalf of the Forest Service argued that the State's water rights compelled the Forest Service to repair and maintain the dams.

**Finding:** "It is not clear...that concerns of stream flow create an obligation to repair, maintain or operate a dam where there has been no operation of the dam for purposes of stream flow enhancement for a period of many years and there is no compelling evidence of 'necessity.'"